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Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement*/ submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 June 2001]

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*/ This written statement is issued, unedited, as received in English, from the submitting non-governmental organization(s).

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HUMAN RIGHTS IN KASHMIR

1. Eleven years ago International Educational Development/Humanitarian Law Project prepared a written statement (U.N. Doc. E/CN.4/Sub.2/1990/NGO/26) on the situation in Kashmir. At that time, an escalation of human rights and humanitarian law violations at the hands of the military forces in Indian-occupied Jammu and Kashmir was exceptionally serious, brought about by renewed insistence by the people of Jammu and Kashmir that the UN-mandated plebiscite be carried out as soon as possible.[1] The Kashmiri people, and their armed defenders, attempted to resist this onslaught, but the armed conflict was primarily effecting the civilian population in the area due to extreme military force by the Indian authorities directed at the civilian population rather than against the Kashmiri military units.

2. In the eleven years since our first statement the situation in Jammu and Kashmir has deteriorated markedly. While the number of Indian military troops varies (ranging from 400,000 to 800,000 persons), the area is essentially under a continual state of siege.[2] Grave breaches of the Geneva Conventions occur with alarming frequency: assassination of political leadership, disappearances, murder and torture of POWs, torture (including rapes) and custodial deaths of civilians, military attacks on the civilian population, attacks on hospitals and medical aid providers, restriction on medical aid and the like. Refugees continue to flee. The United Nations Security Council resolutions regarding the plebiscite remain unimplemented.

3. The international community is well aware of both the failure to implement the plebiscite as ordered by the Security Council over 50 years ago and the massive and continuous violations of the Geneva Conventions and human rights norms throughout the past eleven years. International Educational Development alone has raised both issues more than twenty-five times since 1990 at sessions of both the Sub-Commission and the Commission. We have sent investigators and circulated reports on Kashmir, beginning at the 1993 Vienna Conference and updated annually at the three sessions of the Commission and Sub-Commission immediately following the Vienna Conference. We have participated in NGO forums and international conferences on this topic. We have brought key Kashmiri legal and human rights leaders to sessions of both the Sub-Commission and the Commission. We sadly lost one of our representatives at the 1995 session of the Sub-Commission, Mr. Jalil Andrabi, Chairperson of the Kashmiri Council of Jurists. Mr. Andrabi was abducted and then killed by the Rashtriya Rifles in March 1996 while we were trying to get the necessary documents for him to attend the 1996 session of the Commission. During our work with him at the 1995 session of the Sub-Commission we became aware firsthand of threats against him due to his participation.

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[1] United Nations Security Council Resolution 39 of 20 January 1948 established a Security Council Commission (later named the United Nations Commission on India and Pakistan) to resolve the crisis in Jammu and Kashmir at the end of the colonial rule of the United Kingdom. Both the Commission and the Security Council as a whole subsequently decided that the future of Jammu and Kashmir would be decided by a plebiscite of the people in that area. See, for example, Resolution of the United Nations Commission of India and Pakistan, adopted 5 January 1949, reprinted in United Nations Document S/1196 of 10 January 1949. The Security Council, in its resolution 80 (1950) set up a number of steps, as yet unfulfilled, "for the expeditious determination of the future of the State [of Jammu and Kashmir] in accordance with the freely expressed will of the inhabitants." In 1949 the Security Council had established a "line of control" (the LOC) between the part of Kashmir forcibly seized by India in 1948 and the part of Kashmir under Pakistani influence (Azad Kashmir). The United Nations Military Operations Group for India and Pakistan (UNMOGIP) was established in 1949 and still is in place along the LOC.

[2] India's military forces include the Indian Army, the Border Security Forces, the Rashtriya Rifles, the Special Operation Groups and nearly 80,000 state police.

4. Other non-governmental organizations that have also investigated the situation, issued reports and participated in international conferences concur with our assessment of the situation. We have in our archives more than 35 reports of highly credible international non-governmental organizations issued between 1990 and 2000 attesting to the gross violations of both human rights and humanitarian law. [3]

5. Sadly, in spite of the compelling and credible evidence presented, there has been not one resolution of either the Sub-Commission or Commission on Human Rights calling for the plebiscite to be carried out, or, even worse, condemning the violations in Indian-occupied Kashmir. Every time that the situation has been raised in these human rights forums, India replies that the issue in Kashmir is "Islamic terrorists", that Kashmir is an integral part of India, and that in any case, the issue is a bilateral one -- meaning an issue between India and Pakistan. Yet even under India's description of the legal status of Kashmir, that government is not thereby excused for either Geneva Convention violations or violations of human rights. India is and remains liable for all these acts and the international community should condemn them. That there has been silence to date is an affront to human rights.

6. Our organization has pondered this silence, especially because the government of India constantly raises the issue of "Islamic terrorism" -- which is repeated many times by the western media. We have condemned this racially/religiously-biased use of terms on many occasions. In this light we must state again that the focus of the international community should be on the disposition of Kashmir in conformity with the realization of the right to self-determination of the Kashmiri people -- not the religion of some (actually most) Kashmiris. The vast majority of Kashmiri people want the plebiscite not because they are Islamic but because they are Kashmiris who were promised this plebiscite by the United Nations Security Council. They view, and we concur, that their "incorporation" into India is an illegal vestige of colonialism and that therefore they suffer alien occupation. And most importantly, the use of force by Kashmiri military forces cannot be characterized as terrorism but must be viewed as fully covered by both treaty-based and customary humanitarian law.

6. At time of writing (June 2001) the heads of state of India and Pakistan plan on holding talks in which Kashmir will presumably play a predominant part. At this time, it is unknown whether representatives of the Kashmiri people will be permitted to attend the proposed talks -- or even if they took place. If they did take place and offer some glimmer of hope in resolving the 50-year crisis over Kashmir, then IED/HLP urges the Sub-Commission to recognize and support meaningful initiatives. If the talks did not take place or took place with no positive results, we urge the Sub-Commission to take action that can lead to fulfillment of the United Nations Security Council resolutions on this matter. We especially urge the Sub-Commission to stress the importance of the participation of the Kashmiri people through their leadership in any discussion relating to the disposition of Jammu and Kashmir. In any case, we expect the Sub-Commission to assess and address the overwhelming numbers of humanitarian and human rights violations that have accumulated in Indian-occupied Kashmir.

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[3] A selection of recent reports in our archives on human rights and humanitarian law violations in Indian-occupied Kashmir includes: Amnesty International (3 reports); the International Federation of Human Rights (3 reports); Asia Watch (3 reports), Physicians for Human Rights (UK)(2 reports); Freedom House (annual reports); Committee to Protect Journalists (1 report), Committee of Initiative in Kashmir (New Delhi)(4 reports); South Asia Human Rights Documentation Centre (New Delhi)(2 reports); Jammu and Kashmir Council for Human Rights (3 reports); Jammu and Kashmir High Court Bar Association (3 reports). We also have numerous monographs and hundreds of case testimonies (including photographs). Reports on the situation occur daily in the international media.